

article of drug which was said to be misbranded while held for sale after shipment in interstate commerce, within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 352(f) (1).

"On December 4, 1961, this Court signed a default decree directing that the property against which the libel was filed should be destroyed, or, in lieu of destruction, that 30 units be turned over to the Food and Drug Administration for testing purposes, and the balance be turned over to the Georgia Penal System for use at the Georgia Industrial Institute, Alto, Georgia, to be dispensed by Dr. Hoston J. Walter.

"On December 20, 1961, the claimant to part of the articles seized in the above-styled libel filed a motion to open the default decree, contending that the wrong property was seized and impounded by the Deputy United States Marshal, and that he, claimant Frank B. Wiggs, did not understand his rights relative to the libel and seizure of his property and, therefore, unfortunately did not consult counsel to learn of and understand his rights prior to the entry of said decree by default.

"The Government opposes this motion of the claimant, and has filed a brief in support of its contentions.

"The Court feels that, since the decree of destruction has been complied with, the res of this in rem action is no longer before this Court. Inasmuch as this is an in rem action, the continued existence of the res is essential to the continuation of the action. If the goods are no longer before the Court and the decree has been carried out, the proceeding is completed, and any questions remaining unresolved are, therefore, moot, and there is nothing upon which the Court can act. *United States v. 3 Unlabeled 25-pound bags . . . Mushrooms*, 157 F. 2d 722 (CCA 7, 1946); *Eureka Productions, Inc. v. Mulligan*, 108 F. 2d 760 (CCA 2, 1940).

"Further, default judgments or decrees are not to be opened in absence of a substantial showing of a meritorious defense to the libel and some explanation of reason why the default occurred. *North American Continental Co. v. The El Cuis*, 107 F. Supp. 436. In other words, the respondent must satisfactorily account for his laches.

"In view of the foregoing, it must be concluded that the explanation of why the default occurred is not sufficiently complete in that failure to seek legal advice can hardly be said to be an excusable event, and there also seems to be no substantial showing of the existence of a meritorious defense.

"The motion to open the default and allow filing of responsive pleadings is, therefore, denied.

"IT IS SO ORDERED."

**6920. Rectal ointment and Tum-Tabs tablets.** (F.D.C. No. 46771. S. Nos. 2-222 T, 2-802 T.)

**QUANTITY:** 116 individually ctn'd. tubes of *rectal ointment* and 1 12,500-tablet drum and 5 100-tablet btl's., of *Tum-Tabs tablets*, at Atlanta, Ga., in possession of Hussey Distributing Co.

**SHIPPED:** 4-23-61, from Philadelphia, Pa.

**LABEL IN PART:** (Ctn. and tube) "Net Wt. 1¼ Ozs. Husco Brand Rectal Ointment. Ingredients Phenol, Powdered Nutgall, Oil Tar, Pine Tar and isobutyl-para-aminobenzoate, in a Petrolatum base \* \* \* Distributed by Hussey Distributing Co. Atlanta 3, Georgia"; (drum) "12,500 Tablets Magnalum Each Tablet Contains Magnesium Trisylcate 7½ gr. Aluminum Hydroxide Gel 4 gr. Aromatics q.s."; and (btl.) "100 Tum-Tabs Antacid-Absorbent Tablets Each Tablet contains \* \* \* Distributed by Hussey Distributing Co. Atlanta, Ga."

**ACCOMPANYING LABELING:** Repack labels for *Tum-Tabs tablets*.

**RESULTS OF INVESTIGATION:** The *rectal ointment* was repacked by the dealer from bulk stock shipped on or about 5-1-61, from Philadelphia, Pa. The *Tum-Tabs tablets* were repacked by the dealer from the bulk stock of Magnalum, described above.

**LIBELED:** 12-5-61, N. Dist. Ga.

**CHARGE:** (*Tum-Tabs tablets*, bulk and repack), 502(a)—while held for sale, the labeling contained false and misleading representations that the article was adequate and effective in the treatment of peptic ulcers; and (*rectal ointment*), 502(f) (2)—the labeling failed to bear the warning "In case of rectal bleeding consult physician promptly."

**DISPOSITION:** 2-8-62. Default—destruction.

**6921. Sea-Con.** (F.D.C. No. 46750. S. No. 371 T.)

**QUANTITY:** 4 cases, 12 btls. each, at Charlotte, N.C.

**SHIPPED:** 8-29-61, from Columbia, S.C., by Sea-Con, Inc.

**LABEL IN PART:** (Btl.) "Contents One Pint Sea-Con Concentrated Ocean Water Sterilized Pasteurized Artificial Color Added Sea-Con is Highly Concentrated \* \* \* prepared by Sea-Con, Inc., Columbia, S.C. \* \* \* How to take Sea-Con Take one or two tablespoonsful daily \* \* \* For a mild natural laxative effect" and (case) "Sea-Con A specially prepared concentration from the Sea. The only known source of all 44 water soluble trace elements Trace Elements Wonder of the Sea Nature's natural source of trace elements \* \* \* You may add life to years add years to life."

**LIBELED:** 11-30-61, W. Dist. N.C.

**CHARGE:** 502(a)—when shipped, the labeling of the article contained false and misleading representations and suggestions that the article was of significant value for therapeutic use by reason of the presence of 44 trace elements; and that the article was adequate and effective to prolong life, prevent premature aging, and promote health; and 502(f) (2)—the labeling of the article, which was intended for use as a laxative, failed to warn that the article should not be taken when abdominal pain, nausea, or vomiting are present and that frequent or prolonged use of the article may result in dependence on laxatives.

**DISPOSITION:** 1-26-62. Default—24 btls. were delivered to the Food and Drug Administration and the remainder of the article was destroyed.

**6922. Devine's products.** (F.D.C. No. 45462. S. Nos. 36-871 R, 37-079 R, 38-041/3 R, 38-054/5 R.)

**QUANTITY:** 53 5-oz. tubes and 288 3-oz. tubes of *Kool-Foot*; 72 5-oz. tubes and 432 3-oz. tubes of *Ten Second Rub*; 288 cans of *Per-Fo*; 144 2-dram btls., 10 1-oz. btls., 2 8-oz. btls., and 10 ctns., each ctn. containing 1 3-oz. btl. and a plastic inhalator, of *Zina-Ray Oil*; and 720 envelopes, each containing one pad, of *Karbo-Silekon*, at Philadelphia, Pa., in possession of Miss Eleanor Callet.

**SHIPPED:** Between 11-17-60 and 1-5-61, from Chicago, Ill., by Devine's Remedies, Inc.

**LABEL IN PART:** (Tube) "Devine's KOOL-FOOT \* \* \* Active Ingredients: Eucalyptus Oil—Antiseptic. Devine's Remedies, Inc., 4903 N. Ravenswood Chicago 40, Illinois,"; "Ten Second Rub \* \* \* Active Ingredients: Lanolin, Menthol, Eucalyptus Oil, Peppermint Oil, and Pine Needle Oil \* \* \* Devine's Remedies, Inc., Chicago 40, Illinois"; (some cans) "Devine's PER-FO \* \* \* Directions: \* \* \* Contains: Alkaline Forate of Sodium USP, Phosphate Tri Sodium (Fines), Natural Pine Needle Oil USP 6.07 oz. weight."; "Improved